IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.3763 OF 2005

Dharmendra Nanda Padwal & Ors. ...Applicants

vs.

The State of Maharashtra ...Respondent

Mr.S.R.Chitnis,Senior Counsel with Mrs.V.R.Raje for Applicants
Ms M.H.Mhatre, A.P.P. for State

CORAM: A.S.OKA,J.
DATE : JUNE 21,2005.

P.C.:

1. Rule. The learned A.P.P. waives service for the Respondent. The challenge in this application under Section 482 of the Code of Criminal Procedure, 1973 is to the order dated 3rd June 2005 passed by the learned Sessions Judge on Application at Exh.16 made by the Applicants. The objection in the said application was to the framing of charge against the Applicants under Section 498-A of the I.P.C. The contention raised in the said Application was that there was no material whatsoever for framing charge under Section 498-A.

2. The Additional Sessions Judge rejected the said Application by observing that prior to the framing of charge, the defence Advocate has not objected the under Section 227 of the Code of Criminal Procedure, 1973.

3. It is asserted in this Application under Section 482 of the said Code that the learned Judge rejected the Application

without giving an opportunity of being heard to the Advocate for the Applicant.

4. The learned Counsel appearing for the Applicant submitted that apart from the fact that the Advocate of the Applicant was not heard, there is absolutely no material on record for framing charge under Section 498-A of I.P.C.

5. The learned A.P.P. has supported the impugned order by contending that there is enough material to frame the charge.

6. On plain reading of the impugned order, it is apparent that the learned Additional Sessions Judge has not considered the merits of the case made out in the Application in Exh.16. The specific case made out in the Application was that the charge sheet is devoid of the allegations of the ingredients of demand of dowry as contemplated under Section 498-A of I.P.C. There is no consideration of merits by the learned Judge of the said application and only observation made by the learned Judge is that the Advocate for the Applicants has not objected under Section 227 of the Code of the Criminal Procedure, 1973.

7. In my view, the order deserves to be quashed and set aside only on the ground of non-consideration of the merits of the Application filed by the Applicant.

8. Hence I pass the following order :

i) The order dated 3rd June 2005 passed by the learned Trial Judge below Exh.16 is quashed and set aside.

ii) The Application at Exh.16 is restored to the file and the same shall be decided afresh in accordance with law after hearing the parties.

iii) It is obvious that while deciding the said Application, the learned Trial Judge will consider the case made out by the Applicants as regards charge framed under Section 498-A of the I.P.C.

iv) The Application is partly allowed in above terms.

JUDGE